

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE**

KAREN BARKES, et al.)	
)	
Plaintiffs,)	
)	
v.)	C. A. No. 06-104-JJF
)	
FIRST CORRECTIONAL MEDICAL)	
INC.; STANLEY TAYLOR;)	
RAPHAEL WILLIAMS;)	
CERTAIN UNKNOWN INDIVIDUAL)	
EMPLOYEES OF STATE OF)	
DELAWARE DEPARTMENT OF)	
CORRECTION; CERTAIN)	
UNKNOWN INDIVIDUAL)	
EMPLOYEES OF FIRST)	
CORRECTIONAL MEDICAL, INC.,)	
and STATE OF DELAWARE,)	
DEPARTMENT OF CORRECTION,)	
)	
Defendants.)	

**STATE DEFENDANTS’ MOTION TO STRIKE PLAINTIFFS’ “REPLY
MEMORANDUM” IN SUPPORT OF MOTION FOR REARGUMENT**

COME NOW, the above-captioned State Defendants (“Defendants”), by and through their counsel, and hereby move this Honorable Court for an Order striking from the record the “Reply Memorandum of Plaintiffs in Support of Motion for Reargument.” (D.I. 66). Defendant’s Motion should be granted for the reasons set forth herein.

1. Local Rule 7.1.5, which governs Motions for Reargument, provides as follows:

Motions for reargument shall be sparingly granted. If a party chooses to file a motion for reargument, said motion shall be filed within 10 days after the Court issues its opinion or decision. The motion shall briefly and distinctly state the grounds therefore. Within 10 days after filing of such motion, the opposing party may file a brief answer to each ground asserted in the motion. *The Court will determine from the motion and answer* whether reargument will be granted. (emphasis added).

2. On March 12, 2008 Plaintiffs filed a Motion for Reargument of this Court's Order and Opinion granting Summary Judgment in favor of the State Defendants, issued on February 27, 2008. (D.I. 60, 61). Plaintiff's Motion for Reargument was docketed at D.I. #64.

3. State Defendants filed a Response in Opposition to Plaintiffs' Motion for Reargument, in accordance with Local Rule 7.1.5, on March 26, 2008 (D.I. #65).

4. Plaintiffs purported to file a "reply memorandum" on April 2, 2008 (D.I. #66). The Plaintiffs' reply contained an additional eight pages of argument and a new affidavit.

5. The Local Rule does not permit a "reply memorandum" or provide for any filings beyond the motion and response specifically described in the Rule. The language of Local Rule 7.1.5 is clear that the determination of the Court is to be based solely on the "motion and answer." Plaintiffs' purported "reply memorandum" is not a valid filing. Furthermore, Plaintiffs did not seek or obtain leave of Court to file any additional documents or argument on their Motion.

WHEREFORE, State Defendants respectfully request that this Honorable Court strike Plaintiffs' "Reply Memorandum" on their Motion for Reargument (D.I. #66) from the docket, as not authorized by the local rules, and the contents of said Memorandum should not be considered by this Court in the determination of Plaintiffs' Motion.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

/s/ Stephani J. Ballard
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Attorney for State Defendants

DATED: April 7, 2008

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)	
Defendants.)	

ORDER

AND NOW, this ____ day of _____, 2008, the State Defendants' Motion to Strike Plaintiffs' "Reply Memorandum" in Support of Motion for Reargument having been heard and considered by the Court, it is hereby **ORDERED** that Defendants' Motion is **GRANTED** and the Clerk of Court is directed to strike Docket Item #66 from the record as impermissibly filed.

J.

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CERTIFICATE OF MAILING AND/OR DELIVERY

The undersigned certifies that on April 7, 2008, she caused the attached, State Defendants' Motion to Strike Plaintiffs' Reply Memorandum in Support of Motion for Reargument to be electronically filed with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

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